IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1215 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAGINBHAI AMBALAL SOLANKI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR Jiten M BUDDHBHATTI for Appellant(s) : 1,MR NIRZAR S DESAI for Appellant(s) : 1,
Ms.Falguni Patel, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 10/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant came to be tried by the Sessions Court, Mehsana camping at Patan for the offence of murder of Mevabhai Maganbhai Solanki allegedly committed by the appellant on 19.8.1998 at the Civil Hospital, Patan by administering poison to deceased Mevabhai intravenous.

2. The prosecution case in brief is that the appellant had lured certain persons to part with money for securing a job in the government hospital. Accordingly, deceased Mevabhai had collected money to the tune of Rs.1,60,000/- and had approached the appellant for making the payment. The appellant, however, had other plans, He, in order to grab the money, planned a murder of Mevabhai. He, therefore, made Mevabhai to consume liquor and then by preparing false case paper in name of his own brother made deceased to lie down and then brought bagon spray and, thereafter, infused the same in the body of the deceased along with intravenous fluid. Thereafter, he took the deceased in an autorickshaw to Harij and from there he again took the deceased to Siddhpur allegedly for cremation. The deceased was taken to the crematorium by the accused and there they were noticed by some persons. Ultimately, the police came and arrested the accused. The accused was found with the deceased so also Rs.1,60,000/-. An offence was registered and investigation started. Post-mortem was performed, viscera collected and sent to the FSL for examination. The FSL report indicated presence of poison in the viscera. During the investigation, the

accused discovered the bottle of intravenous fluid, the tin of bagon spray and IV set with the help of which the fluid was administered. These articles were also sent to the FSL for examination and were found to contain traces of bagon poison. It is the say of the prosecution that on the eventful day, the accused was not supposed to be on duty during the night. But he was noticed in the hospital during the night by witnesses and on being questioned, he gave an excuse that his cousin has fallen ill and is brought to the hospital for treatment. When asked if he would like the doctor to be summoned, he refused for the help of the doctor and said that he would himself administer medicine. The police, thereafter, ultimately filed charge sheet having found sufficient material against the appellant. Learned J.M.F.C., in turn, committed the case to the Court of Sessions and Sessions Case No.293 of 1998 came to be registered.

2.1 The charge against the accused was framed at Exh.3 for offences punishable under Section 302 and 201 read with Section 511 of the Indian Penal Code. The accused pleaded not guilty to the charge and claimed to be tried.

2.2 The trial Court, after considering the evidence led by the accused, recorded the statement of the accused under Section 313 of the Criminal Procedure Code and after hearing rival sides, came to the conclusion that the prosecution was successful in establishing the charges levelled against the appellant-accused and convicted him for the offence punishable under Section 302 of Indian Penal Code and

sentenced him to undergo imprisonment for life and to pay fine of Rs.1,000/- in default to undergo simple imprisonment for three months. For the offence punishable under Section 201 read with Section 511, the trial Court sentenced the appellant-accused to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months. Both the sentences were ordered to run concurrently. It is against this judgment and order that the appellant has approached this Court with this appeal.

3. We have heard learned advocate Mr.Buddhbhatti appearing for the appellant and learned A.P.P.Ms.Patel for the respondents.

4. Learned advocate Mr.Buddhbhatti submitted that the prosecution case depended on circumstantial evidence and there was no direct evidence to link the accused with the crime. Before the trial Court, most of the witnesses have not supported the prosecution case and have been treated as hostile to the prosecution. Mr.Buddhbhatti submitted that the evidence led by the prosecution is weak and scanty. Each circumstance is not established by the prosecution with cogent evidence and the chain connecting the accused with the crime is incomplete. The trial Court has over looked these aspects and has recorded the conviction.

4.1. Mr.Buddhbhatti submitted that there is no evidence worth name to show that on the fateful night, the deceased had gone to the hospital. There

is no evidence to show that cousin of the appellant-accused was not unwell and false case paper was prepared by the accused in name of his cousin. Mr.Buddhbhatti submitted further that there is no evidence to show that the deceased was taken out of the hospital by the accused in a rickshaw or in any other manner. There is no evidence to show that the deceased was taken by the accused firstly from Patan to Harij and from Harij to crematorium at Siddhpur. The autorickshaw driver has not supported the prosecution case in this regard. Mr.Buddhbhatti submitted that if the accused had an evil eye on Rs.1,60,000/- in possession of the deceased and if the accused was successful in making the deceased dead-drunk, he could have very well taken away the money while the deceased was in that condition without administering poison. Even after administering poison, the accused could have very well taken away the money and disappeared. The theory of the prosecution and motive shown by the prosecution, therefore, is not correct.

4.2. Mr.Buddhbhatti submitted further that there is no evidence to show that the accused was in possession of poison prior to the incident nor is there any evidence to show that he had ample opportunity to administer the same to the deceased. The evidence of chemist from whom the accused allegedly purchased the bagon spray is very shaky and unreliable. The chemist is not sure whether it was the accused who had purchased bagon spray from him. The bill which is relied upon by the prosecution is in name of someone who has not been examined by the

prosecution and therefore, the evidence about possession of poison by the appellant accused is not properly established.

4.3 Mr.Buddhbhatti submitted that evidence of nurse regarding missing of a bottle of saline is of no help to the prosecution. Missing of bottle would not mean that it was the bottle which must have been stolen by the accused and must have been used by the accused in commission of the crime.

4.4 Mr.Buddhbhatti submitted further that the conduct of the appellant has to be seen. If he had intention to take money and run away, he would have done that much earlier and at the hospital itself. Even thereafter, after taking the dead body to Siddhpur, he could have very well left the dead body there and escaped with money because there was none who would have stopped him from doing so. Under these circumstances, Mr.Buddhbhatti submitted that the prosecution case cannot be said to have been proved beyond reasonable doubt and benefit may be given to the accused. The chain of circumstances is not properly established. There are many missing links and many links are weak in the chain and benefit, therefore, may be given to the accused.

5. Learned A.P.P.Ms.Patel opposed this appeal. Ms.Patel submitted that the prosecution case depends on circumstances and the prosecution has been complete and is held to have successfully established a complete chain of circumstances to link the appellant with the offence. She submitted that on the

fateful night, the appellant had no reason to be in the hospital and when he is noticed by witnesses, he projects a false reason of his cousin having fallen sick and brought to the hospital for treatment. Ms.Patel further submitted that the appellant has purchased bagon spray from a chemist who had been examined by the prosecution as a witness. She also submitted that the appellant has discovered the bottle of bagon spray containing intravenous fluid and I.V. set used for infusion of the drug into the body of the deceased and they all contain traces of the bagon poison. Mr.Patel submitted further that the incident has occurred at Patan and the appellant had no reason to be in the crematorium at Siddhpur along with the dead body. The motive of grabbing Rs.1,60,000/- is established through the witnesses who were party to the deceased collecting money to be given for securing government job to the appellant. That money is found from the appellant, when he was found with the dead body, this completes the chain of circumstances to establish nexus between the appellant and the offence. She, therefore, submitted that the trial Court has justifiably accepted the prosecution case and recorded conviction. This Court may not interfere in exercise of its appellate jurisdiction with the said order and the appeal may be dismissed.

6. We have examined the Record and Proceedings keeping in mind the contentions raised by rival sides.

7. From the evidence of P.W.29 Dr.Arvindbhai

Hargovindbhai Patel at Exh.64, the post-mortem notes Exh.65, Certificate as to cause of death Exh.66 and the report of FSL Exh.73 make it clear that the deceased died of poisoning. We may add that the evidence regarding poison being administered in the vein is shaky for the reason that no puncture injury was found on hand of the deceased at the time of post-mortem which ordinarily would have been there if the drug was injected to the deceased. The medical evidence and the evidence of FSL indicates that the deceased died of sudden cardiac stoppage and respiratory failure due to Bagon poison. This would indicate a possibility that poison may have been orally consumed as there was no sign of puncture, noticed by the doctor which would rule out injection of poison. But there also cross-examination of doctor to indicate that there were no signs of inflammation in the esophagus which should normally be present in cases of consumption of poison. Doctor also admits that the opinion on cause of death was given by the panel on basis of report of the serelogist of FSL. The doctor has lastly stated that possibility of death of the deceased on account of Anamia cannot be negatived.

7.1. Therefore, the evidence led by prosecution on cause of death is vague and non-specific, though it appears to be specific in the certificate. It cannot be authentically said or held that what is certified as cause of death by the panel of doctor was in fact the cause of death. That being so it cannot be said with certainty that the death of the deceased was homicidal.

8. It is now to be examined whether the homicidal death can be attributed to the appellant from the evidence led by the prosecution.

9. The case of the prosecution is founded on circumstances and a large number of witnesses have been examined.

10. P.W.1 Jagmalbhai Maganbhai Solanki is the brother of the deceased Mevabhai who is examined at Exh.10 and he has not supported the prosecution case. Incidentally, he is the first informant in the case. Likewise, P.W.2 Natubhai Babaldas Darji, P.W.6 Mukeshbhai Amrutlal Rathod, P.W.7 Bhikhabhai Ramabhai Makwana, P.W.8 Ashokkumar Bhogilal Solanki, P.W.9 Dasrathji Virchandji Thakore, P.W.12 Dipakbhai Sardarji Thakore, P.W.13 Somabhai Maganbhai Solanki, P.W.14 Rakhiben Mevabhai Solanki P.W.17 Rajeshbhai Ishwarbhai Patel, P.W.18 Deepakbhai Chandulal Bhamcha, P.W.19 Satishbhai Ratilal Raval, P.W.20 Machhabhai Vaghaji Thakore, P.W.21 Shamantbhai Jorabhai Mal, P.W.22 Mahendrabhai Ambalal Patel, P.W.23 Vishabhai Jakshibhai Rabari, P.W.24 Ranjitbhai Kuvarji Thakore, P.W.28 Amratbhai Lakhabhai Desai have not supported the prosecution case, have been treated as witnesses hostile to the prosecution and put to test to cross-examination by the learned P.P. These are witnesses who can be termed either as independent witnesses or as witnesses interested in the deceased. They would have no reason not to support the prosecution and, therefore, this would reflect seriously on the manner in which the

investigation is carried out the evidence collected and led by the prosecution.

11. P.W.1 Jagmalbhai Maganbhai Solanki is examined at Exh.10. He happens to be the brother of the deceased and first informant. The FIR given by him is at Exh.11. His version as emerging from his FIR and the deposition is consistent so far as money being collected for securing job in the government hospital is concerned and the deceased having collected Rs.1,60,000/- from various persons and having gone to Patan the previous evening to meet the appellant is concerned but thereafter there is a change in the version as is emerging from the FIR and the deposition. In the FIR, certain incriminating statements are put into the mouth of the appellant as extra-judicial confession to which the witness does not make any reference to in his deposition. Not only that he denies to have so stated in the FIR.

11.1 P.W.2 Natubhai Babaldas Darji, Exh.12 is a person who was informed by some boys at about 8 a.m., in the morning of 19/8/98 that a person is sitting on the Kahoda road in a drunken condition. He, therefore, telephoned to the police about the same. The witness is basically an LIC agent and also engaged in social services. When he went to the crematorium, the police had already arrived. He saw a man sitting there. He also learnt that police had recovered Rs.1,60,000/-. His signature was also obtained in this regard. That man was sitting with his back resting on wall. The witness then says that he is not sure if the accused was present at that

place. He denies to have interrogated the appellant Naginbhai Ambalal and that on being asked, he was told by the appellant that the dead body was of his brother and it is brought by him for cremation. This witness has also been declared hostile. He denies to have stated before the police that he saw the dead body resting on wall and the appellant standing by the side of the dead body claiming that he is the brother of the deceased and that the dead body was brought for cremation.

11.2 P.W.13 Nagarbhai Kalubhai Chamar is a panch witness who has also not supported the prosecution case regarding making of panchanama Exh.16. Panchanama is at Exh.16 which is drawn at the crematorium between 12.40 to 13.40 hours on 19.8.98. The panch speaks of presence of the appellant with a cloth of bag containing Rs.1,60,000/- which came to be recovered by the police. Panch witness to Exh.16 Ayubbhai Mahamadbhai Sipai is examined at Exh.17. He says that the panchanama Exh.16 was drawn on the bank of river Saraswati at Siddhpur. At that time, a cloth bag was lying containing money. The money was recovered by the police. The clothes which were found in the cloth bag have also been recovered by the police. During cross-examination, he admits that police had obtained a large number of signatures and he does not remember as to in how many blank papers had he put his signatures. He says that panchanama was dictated by the police Sub-Inspector and written by the writer. He admits that he identified the accused in the Court because he was sitting in the dock. He denies that when the panchanama was drawn,

the accused was present. He also denies the suggestion that he is deposing against the accused falsely because money was not given to him.

11.3 P.W.5 Ranjitbhai Babulal Padhua is examined at Exh.19. He is a witness to the inquest panchanama. He says that he learnt that the dead body was that of Mevabhai on him being informed by the appellant. He described about the condition of the dead body and the manner in which the panchanama was drawn. He has been cross-examined by the defence and he admits that he had not obtained any advice from any lawyer initially but later on he did. He states that about 20-25 persons had assembled near the dead body when he reached there. Nothing relevant then emerges from the cross-examination of the witness. The Inquest panchanama is at Exh.20.

11.4. P.W.6 Mukeshbhai Amrutlal Rathod is examined at Exh.22. He is the person working in the Government Hospital as Ward Boy. He identifies the accused as the person working in the hospital around the time of the incident. He also states that on the night of the incident, Dr.G.J.Nayak and sisters S.K.Jansari, Dongiben and Barotben were on duty. The pharmacist was one Nanjibhai Patel. According to this witness, he new Nareshbhai and he was formerly working in the hospital as a ward boy. He says that on noticing lights of the emergency ward at about 2.00 a.m.,he went there and noticed the appellant. On inquiry being made, he was informed by the appellant that his cousin is suffering from diarrhea and vomiting and, therefore, he is brought to the hospital for

treatment. At that time, Bhikhabhai and Ashokbhai had accompanied the witness. On inquiry being made, they were told by the appellant that necessary case papers have also been prepared and that necessary medicines have also been prescribed by the doctor. He denied that the appellant was helping a person to sleep on the cot and on noticing that they inquired as to why appellant is doing so. He also denies the suggestion that the appellant told that the doctor has advised to admit the patient. He also denies the suggestion that they asked the appellant if he would need help of sister for administering intravenous medicine to which the appellant said no. He also denies that the appellant then brought out a bottle and asked the witness to catch the hand of the patient and the appellant administered the medicine in the vein. The witness is then declared hostile and has been put to test of cross-examination by the learned APP. But he sticks to his version. During cross-examination to the defence lawyer, he admits that after 5.30 p.m., the hospital time is over and thereafter a doctor attends the hospital for emergency cases in the emergency ward. For that purpose, the case paper for emergency services are prepared. The doctor attends to such patients and after making note in the case papers, sends the patient to relevant ward.

11.5 Bhikhabhai Ramabhai Makwana is a Watchman of the hospital who accompanied the witness Mukeshbhai Rathod to the emergency room. This witness also does not support the prosecution case and has been declared hostile. From his deposition, what emerges is that while he was on duty as a watchman at the

hospital on the day of the incident, no rickshaw had entered the hospital or had left the hospital from the main gate.

11.6 Ashokkumar Bhogilal Solanki was working as a sweeper in the hospital at the relevant date. He was also one of the persons with Mukeshbhai who had noticed the appellant in the emergency ward. This witness has also not supported the prosecution case and has been treated hostile.

11.7. Next witness is Dasrathji Virchandji Thakore Exh.25 who was the autorickshaw driver. He claims total ignorance about the incident and claims that he learnt about the incident later on. He denies that in his autorickhaw the dead body was taken from Patan to Harij on a determined fare of Rs.125/-. He also denies that after reaching Harij, the appellant told him to go to Siddhpur. This witness has also been treated as hostile to the prosecution.

11.8 Evidence of Nanjibhai Pitambardas Patel P.W.10 is at exh.26. He was working as a pharmacist in the hospital. He says that on the day of the incident, Ashokbhai Solanki, Bhikhabhai Solanki, Jayaben Thakore, Mukeshbhai etc., were on duty. He also referred to Harshidaben Barot and Vilasben Dangina as persons on duty. He says that ordinarily in case of emergency, case papers are prepared by him but if there is more workload and if he is busy with some other work, the case papers are prepared by Naginbhai, the appellant who was working as a peon. He says that in case no.3450, there is no

prescription of any medicine by any doctor. It is a blank medical case paper.

11.9 Staff nurse Savitaben Keshavlal Jansari is at exh.29. She says that whenever the doctor prescribes, they administer heavy drug through saline bottle under supervision of the doctor. Usually, 15 bottles of this fluid are kept in stock out of which 5 contain 5% glucose, 5 contain 5% DNS and 5 contain 5% RL. On 18.8.1998, during night duty, no bottle was used or administered during night nor had she issued any such bottle. In her absence, one bottle was used but she is not sure as to who used it. She says that on next morning, while counting stock, one bottle was found running short and, therefore, she inquired from Mukeshbhai as to why there is a shortfall of one bottle and Mukeshbhai told her that Naginbhai (appellant) has taken one bottle of 5% glucose.

11.10 Dipakkumar Sardarji Thakore at Exh.30 is the rickshaw driver who has not supported the prosecution case. He denies that at about 3.30 a.m., on 19.8.1998, the accused asked him to help him in putting the dead body of Mevabhai in rickshaw. He denies that he went to Harij with dead body and the accused and then to Siddhpur. The witness is declared hostile.

11.11 Witness Somabhai Maganbhai Solanki Exh.31 is the brother of the deceased. He says that he knows Naginbhai the appellant who is working in the hospital. He belongs to Boratwada. He says that the appellant had assured Mevabhai the deceased to secure

a job in the government hospital and Mevabhai in turn informed Paragbhai and Lalitaben about the same. The accused had told them that they will have to pay initially Rs.5,000/- and, thereafter, Rs.35,000/- and, therefore, they had all parted with Rs.1,25,000/- and given it to the deceased for being transmitted to the appellant. This witness, thereafter, says nothing and denies that any incriminating statement was made by the accused and, therefore, he is declared hostile.

11.12 Rukhiben w/o Mevabhai Maganbhai Solanki Exh.32 who is the wife of the deceased has also not supported the prosecution case. She denies of anything having been transpired between the accused and the deceased regarding securing job and money therefor.

11.13 Witness Jayantilal Nanalal Contractor Exh.33 is the person working as Circle Inspector and prepared the map of the incident which is at Exh.35.

11.14 Valabhai Hemabhai Patel Exh.36 is the person from whom the appellant allegedly had purchased a tin of bagon spray by paying Rs.42/- in the evening of 18.8.98. It was a tin containing 250 ml.,of bagon spray. He says that the accused had gone to his shop to purchase but during cross-examination he states that he had not closely watched the accused on the relevant date. His attention was towards other customers also and he identifies the accused in the Court because he is sitting in the dock. The bill issued by him was in respect of another person and

did not carry any details as to name of the accused etc.

11.15 Rajeshbhai Ishwarlal Patel Exh.38 is the person before whom the appellant had shown the place of incident and having made certain incriminating statement. He, however, denies all these aspects and is declared hostile by the prosecution. The said discovery panchanama is at Exh.40 where the injection, IV set and the bagon spray etc. are alleged discovered by the accused. The said panchanama is at Exh.40. Panch witness to recovery of the clothes of the accused is at Exh.41. He is Dipakbhai Chandulal Bamcha. He does not support the prosecution case and denies the suggestion that he is not telling the truth to help the accused.

11.16 Satishbhai Ratilal Raval Exh.44 is a witness who has not supported the prosecution case that he was introduced to the appellant by Mevabhai and that he had paid Rs.35,000/- to Mevabhai. He is also declared hostile. Panch witness Manchhabhai Vaghaji Thakore is at Exh.45 who states that he had signed Exh.46. Beyond that he does not know anything. He is also declared hostile. Samantbhai Jorabhai Mal and Joramal and Mahendrabhai Ambalal Patel are also witnesses who have not supported the prosecution case at all.

11.17 Witness Ranjitbhai Kunvarji Thakore Exh.54 was the person who was working at Bharat Petrol Pump. He says that on 19.8.98, while he was working on the petrol pump as dispenser, one person had come for

filling up petrol in an autorickshaw. No body else had come. He says that he does not know the name, surname or details of that person and number of autorickshaw. He is declared hostile. Rest of the witnesses are either police witnesses or technical witnesses.

12. By way of documentary evidence, the medical case papers which were found from the pocket of the appellant were sent to the FSL and it has been certified by the handwriting expert that the disputed writings are of the appellant where the name of Panabhai Dhanabhai Solanki is written. It is the case of the prosecution that the said name was written by the appellant.

12.1. Apart from this FSL report, there is evidence in form of medical case papers in name of appellant and his wife.

13. From the above evidence, the picture that emerges is that on the date of the incident, the appellant was allegedly noticed in the emergency room by three persons namely Mukeshbhai Rathod, Bhikhabhai Makwana and Ashokkumar Solanki. All these three persons have not supported the prosecution case. Assuming for a moment that they did notice the appellant in the emergency ward, they do not say that it was the deceased who was administered medicine by the appellant. There is no evidence to show that the cousin of the appellant i.e. Panabhai Solanki was not unwell and had not gone to the hospital. Panabhai was cited as a witness in the charge sheet but has been

dropped by the prosecution stating that he is not likely to support the prosecution case as the parties have settled dispute inter se outside the Court. Be that as it may, the fact remains that the prosecution has failed to bring on record any material to show that on the relevant date when the appellant was found in the emergency ward during night, deceased was also there.

13.1 Similarly, it is the case of the prosecution that the appellant administered poison to the deceased in hospital. In this regard, the witnesses have not supported the prosecution and as such there is no evidence worth the name that appellant administered the poison.

13.2 Incidentally, there is no cogent evidence to show that the appellant was in possession of the bagon spray poison. Evidence of Valabhai, person who allegedly sold bagon spray to the appellant does not clearly establish that it was the appellant who had purchased bagon spray from him. He identifies the appellant in the Court because the appellant was sitting in the dock. The bill produced on record is not in the name of the appellant and for which an explanation is given that because appellant did not wait to take bill, he added the said item into the bill of another person and that another person also is not examined.

14. It is then the case of the prosecution that the deceased was taken in an autorickshaw by the appellant to Harij and then from Harij to Siddhpur.

In support of this, the prosecution has examined Dasrathji Thakore and Dipakbhai Thakore. These two witnesses have also not supported the prosecution case. They deny to have taken the accused with the deceased to these places and as such there is no such evidence on record to show that the deceased was taken from the civil hospital by the accused. In this regard, evidence of Bhikhabhai Makwana is also relevant. He is the watchman at the hospital. He admits in cross-examination that no autorickshaw had ever come to the hospital or gone out of the hospital during night of the incident.

15. It is further the case of the prosecution that the bottle of the intravenous fluid was given to the appellant by Mukeshbhai Amrutlal Rathod but he also does not support this version.

16. As regards motive, it is relevant to note that the money was found in a cloth bag lying by side of the dead body where the accused was also sitting and he must have been there for quite a long time because, some boys; noticing this; informed Natubhai Darji who in turn informed the police and then lodged the FIR. Had the motive of the appellant been to usurp Rs.1,60,000/- which the deceased had brought with him, he would not have sat there for such a long time. In fact, if the prosecution story is accepted, the appellant had made the deceased to consume liquor to such an extent that he became unconscious and thereafter, the appellant administered poison intravenous. If the motive was to rob the deceased of Rs.1,60,000/-, the appellant could have very well

taken the money and gone away after the deceased became unconscious after consuming liquor. There was no need for the appellant, thereafter, to administer the poison and then to carry the dead body from Patan to Harij and from Harij to Siddhpur which aspect of course is not supported by any other evidence. The motive part, therefore, does not sound to us to be good enough to be accepted.

17. For accepting the prosecution case and confirming the conviction, this Court would be required to presume that it was the deceased who was in the hospital on the relevant night, that the appellant purchased Baygon poison and had the same in his possession, that the appellant administered the intravenous poison, that the appellant took the dead body in an autorickshaw from the hospital to Harij and then to Siddhpur although there is no evidence to prove these facts least a reliable evidence. In our view, the chain of circumstances cannot be said to have been properly established by the prosecution to link up the appellant with the offence. Neither motive nor the circumstances are properly proved by the prosecution. For accepting the prosecution case this Court will have again to presume that it was the appellant who purchased the bagon spray and that he had that bagon spray in his possession and that he could have administered the same to the deceased. This is not permissible in light of what is observed by the Apex Court in case of Ramgopal V/s State of Maharashtra, AIR 1972 SC 656 where their Lordships observed that in a case of death by poison, it is only when the motive is there and it is proved that

the deceased died of poison in question, that the accused had that poison in his possession and that he had an opportunity to administer the poison to the deceased that the Court can infer that the accused administered poison to the deceased resulting into his death. These factors are missing in the present case and, therefore, the conviction recorded by the trial Court cannot be confirmed and deserves to be set aside by allowing this appeal.

18. This appeal is, therefore, allowed. The judgment and order passed by the learned Additional Sessions Judge, Mahesana (Patan) in Sessions Case No.293 of 1998 on 22.10.1999 is hereby set aside. The appellant is set at liberty forthwith, if not required in any other case. There shall be no change in order relating to muddammal.

(A.L.DAVE, J)

(SHARAD D DAVE, J)

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